

## **Appendix: KEY LEGAL FACTS AND FIGURES 2007-08**

(Note: the annual report figures are for the year from 1 April 2007 to 31 March 2008)

### **GRANTS OF LEGAL ASSISTANCE**

359,354 grants of legal assistance (advice and assistance and legal aid work) were made in 2007-08, a reduction of 12% on the previous year.

#### *Criminal legal assistance*

Criminal advice and assistance (excluding ABWOR) fell by 16% to 104,747.

Criminal ABWOR fell by 9% to 17,328.

Solemn grants fell by 8% to 12,782.

Summary grants fell by 9% to 75,582.

#### *Civil legal assistance*

Civil advice and assistance (excluding ABWOR) fell by 18% to 86,054.

Civil ABWOR rose by 11% to 3,960.

Civil legal aid grants fell by 6% to 10,650.

#### *Children's legal assistance*

Children's advice and assistance fell by 20% to 4,678

Children's legal aid grants fell by 6% to 4,206

#### *Contempt of court grants rose by 7% to 506*

Over the last five years, the number of grants of legal assistance, made by solicitors, has fallen by 19%. The vast majority of this reduction has been in advice and assistance. For most types of legal aid, the reductions in volume seen in 2007-08 were in contrast to the substantial rises seen over the last few years. Overall, there has been a 1% rise over the last five years in the number of grants of legal aid (civil, children's, contempt and criminal, including appeals and automatic criminal legal aid). Of all grants of legal assistance, 27% now relate to legal aid (as opposed to advice and assistance), up from 21% five years ago.

#### *Criminal legal assistance 2003-08*

Criminal advice and assistance (excluding ABWOR) fell by 23%

Criminal ABWOR fell by 24%

Solemn grants rose by 12%

Summary grants fell by 1%

#### *Civil legal assistance 2003-08*

Civil advice and assistance (excluding ABWOR) fell by 36%

Civil ABWOR fell by 4%

Civil legal aid grants fell by 14%

#### *Children's legal assistance 2003-08*

Children's advice and assistance fell by 18%

Children's legal aid grants rose by 15%

#### *Contempt of court 2003-08: grants rose by 146%*

## **COST TO THE TAXPAYER**

Legal assistance cost the taxpayer £155.1 million, up 3% on 2006-2007. This was mainly due to the increased number of grants of key types of legal aid made in 2006-2007.

### *Criminal legal assistance*

The total cost of criminal legal assistance was up 4%, at £110.5 million.

Criminal advice and assistance (excluding ABWOR) fell by 8% to £7.5 million.

Criminal ABWOR fell by 5% to £3.5 million.

Summary criminal legal aid rose by 1% to £52.6 million.

Solemn criminal legal aid rose by 10% to £41 million.

### *Civil legal assistance*

The total gross cost of civil legal assistance (including the cost of the Board's directly employed civil legal assistance solicitors) was up 4% to £52.6 million.

The total net cost of civil legal assistance was up 2% at £39.8 million.

Civil advice and assistance (excluding ABWOR) fell by 4% to £16.6 million.

Civil ABWOR rose by 37% to £2.6 million.

Civil legal aid (gross) was up 5% at £33.1 million.

Income in civil legal aid cases (contributions, expenses, and recoveries from property recovered or preserved) was up 9% at £12.8 million.

The resulting net cost of civil legal aid was up 3% at £20.4 million.

The cost of the Board's directly employed civil legal assistance solicitors was £0.27 million.

### *Children's legal assistance*

The cost of children's legal assistance was up 2% at £4.5 million

The cost of children's advice and assistance fell by 9% to £0.4 million

The cost of children's legal aid rose by 3% to £4.1 million.

*Contempt of court* costs were up 46% at £0.15 million.

Over the last five years, expenditure has increased by 6% – a rise of £9.1 million. Most of the increase has been because of an 8% or £8.0 million rise in the cost of criminal legal assistance.

In legal aid, average case costs generally fell last year. In advice and assistance (including ABWOR) average case costs rose, particularly in civil cases.

Average case costs for solemn criminal legal aid cases fell 5% to £2,824 and for summary criminal cases remained almost static at £646.

Overall civil legal assistance expenditure has remained relatively static for many years. 2007-08 saw a small reduction (1%) in average case costs for civil legal aid cases.

Average costs in civil advice and assistance and ABWOR continue to increase but mainly because of the increased numbers of mental health cases which are more costly than most other types of case.

Expenditure on children's legal aid has increased steadily for a number of years.

## **LEGAL PROFESSION AND PAYMENTS MADE**

The Board's website [www.slab.org.uk](http://www.slab.org.uk) includes the list for payments made to all solicitor firms, advocates and solicitor advocates in 2007-08. Previous years are also available online.

### **SOLICITOR NUMBERS**

Firms of solicitors must be registered to undertake legal assistance work. In addition, individual solicitors who undertake criminal legal assistance must also be registered. As at 31 March 2008 there were:

- 582 firms registered with the Board to offer criminal legal assistance, 2% fewer than the previous year
- 1,400 solicitors registered with the Board to provide criminal legal assistance, 4% fewer than the previous year
- 650 firms registered with the Law Society to provide civil legal assistance, 4% fewer than the previous year (individual solicitors are not registered to provide civil legal assistance, only their firm).

### **PAYMENTS MADE TO THE LEGAL PROFESSION**

- Last year the amounts paid for legal assistance from the legal aid fund were:
  - £126.4 million to solicitors, an increase of 4%, or £4.4 million, compared to 2006-2007
  - £21.6 million to counsel (advocates and solicitor advocates), an increase of 4%, or £0.9 million
  - £18.1 million on outlays, virtually the same as the year before.
- Over the last five years, payments made for legal assistance overall have increased by 6% or £9.4 million:
  - payments made to solicitors over this period have risen by 3%, or £3.5 million
  - payments to counsel have increased by £3.8 million, a rise of 21%
  - the cost of outlays has increased by 13%, or £2.1 million.
- last year payments to solicitors for criminal legal aid work increased by £4 million (6%) to £76.7 million
- The highest fee earning firm was Livingstone Brown Solicitors at £1.9 million.
- In 2007-08 the highest fee earning advocate was Donald Findlay at £369,300 and the highest fee earning solicitor advocate was John Carroll, of John Carroll and Co. Solicitors, who was paid £210,100.

## **BOARD SERVICE PERFORMANCE AND COSTS**

- For 2007-08, we met or performed better than all eight of our headline performance targets. Two of these had been increased compared to the previous year. These are the key measures of our operational performance.
- The average time taken by the Board to administer civil legal aid applications has fallen by 14% to just under 13 working days.
- The Board's running costs were £13.2 million, an increase of 3% on the previous year. This increase reflects a broader range of functions for the Board, as well as an investment in systems that will deliver savings in future years. The Board's running costs for the next three years are flatlined with no increases for inflation or wage increases, which will have to be met from efficiency savings.

## **CIVIL LEGAL ASSISTANCE**

### **CIVIL ADVICE AND ASSISTANCE AND ASSISTANCE BY WAY OF REPRESENTATION**

The number of civil advice and assistance cases granted by solicitors has been reducing for many years. Last year saw an expected larger reduction as a result of changes to the operation of civil advice and assistance and ABWOR. These were

- The removal of minimum fees
- New controls over multiple grants of advice and assistance to single applicants
- Increased verification by solicitors of the financial information provided to them by applicants.

### **CIVIL LEGAL AID**

Civil legal aid applications reduced 3% to 15,861, continuing the long term downward trend. The reduction last year was smaller than in most previous years and was caused largely by a reduction in applications relating to reparation, such as personal injury cases. This is a result of the growth in no win/no fee options.

There was a 17% rise in applications relating to housing issues, including rent arrears and mortgage rights, and a 41% increase in cases involving adults with incapacity.

Overall expenditure on civil legal aid is influenced by a small number of very expensive cases, where the costs are over £50,000. In 2007-08 there were 36 such cases, an increase of seven cases compared to the previous year. The total cost of these cases last year was £3.2m – almost 10% of the total gross cost of civil legal aid - which is significantly more than the £2.5m spent on high cost cases the previous year.

Civil legal aid may be free, or someone may have to pay towards the cost of the case. Over three quarters of people granted civil legal aid do not pay a contribution towards the cost of the case. Last year 23% of people who received legal aid had to pay a contribution – a fall of 2%, with the average amount at £1,027 a slight fall from last year. This level has been almost the same for the last five years.

If a legally assisted person's case is successful, their opponent may be ordered to pay their expenses, and we will use this to pay for their legal aid. If these expenses do not meet their legal aid costs, they may have to pay from any money they win or keep in their case – for example, in damages cases - this is often called “property recovered or preserved” or “clawback”. Taking contributions, expenses and property recovered or preserved together, the Board received £12.8 million towards the cost of civil legal aid last year. This means we recovered 39% of the total spent on civil legal aid cases, compared to 37% last year.

## **CRIMINAL LEGAL ASSISTANCE**

### **CRIMINAL ADVICE AND ASSISTANCE**

There are a number of reasons for the reductions in grants by solicitors of criminal advice and assistance and ABWOR:

- There was less summary criminal business going through the courts last year than in recent years.
- Changes in the law and revised guidance issued by the Board over recent years have reduced the number of grants of advice and assistance solicitors are able to make to individual clients. At the same time, some advice that would previously have resulted in a separate grant of advice and assistance has been brought within the scope of a grant of legal aid. We believe that the success of these measures results in the criminal advice and assistance scheme providing better value for taxpayers while continuing to ensure that those with problems relating to criminal charges receive the advice they need.
- In June 2008, significant changes were made to the way summary criminal cases are handled, both in the courts and in legal aid terms. This will result in a further substantial reduction in stand-alone grants of advice and assistance, but payment rates have been very substantially increased for ABWOR, so we expect to see a large rise in the number of grants of ABWOR made by solicitors.

## **SUMMARY CRIMINAL LEGAL AID**

Applications to the Board for summary criminal legal aid decreased by 8% to 82,657. This reverses the substantial continued growth we have experienced in applications for summary criminal legal aid for most of the last ten years. The 1% increase in the cost of summary criminal legal was due to the increase in the number of cases granted the previous year.

## **SOLEMN CRIMINAL LEGAL AID**

The reduction in grants in 2007-08 only partly reverses the very large increase in grants seen in the previous couple of years, meaning that the total for 2007-08 remains higher than for any other year before 2006-07.

There were significant reductions in murder/ attempted murder/culpable homicide (19%, or 164 cases), assault (10%, 469 cases), theft/housebreaking/robbery (15%, 268 cases) and offensive weapons (12%, 148 cases).

The 10% increase in the cost of solemn criminal legal aid reflects the increase in grants made by the courts in earlier years. As in previous years, a very small number of very expensive cases, where the costs are over £50,000, have a significant impact on overall expenditure. Last year there were 36 such solemn cases, 12 fewer than in 2006-07. The total cost of these cases was £3.5m - almost 9% of total solemn expenditure - compared to £4.4m the previous year.

## **PDSO, THE PUBLIC DEFENCE SOLICITORS OFFICE**

In 2007-08 the PDSO handled 1,907 cases, including 75 solemn cases.

The cost of funding PDSO was £1,321,000. This was 53% higher than the previous year, reflecting the growth in the PDSO network from 4 to 7 offices.

PDSO solicitors are paid an annual salary rather than being paid on a case by case basis in the way that private solicitors are. PDSO solicitors are governed by the same rules as private solicitors.

## **CHILDREN'S LEGAL ASSISTANCE**

The 3% growth in the cost of children's legal aid was due to an increase in the number of cases paid as a result of the increase in cases granted by the courts the previous year. We continue to see a small number of very expensive cases (each costing over £50,000). Last year there were 12 such cases at a cost of £1.2 million - more than a quarter of the total paid.

## **CONTEMPT OF COURT**

The 7% increase in grants by the courts in contempt of court cases was considerably smaller than in the past two years.

The 46% increase in costs was because of a 25% increase in the number of accounts paid and a 17% rise in the average cost of these cases.

## **WORKING WITH THE PROFESSION**

The Board:

- Worked with the profession to develop a new fee structure for solemn criminal legal aid, to be accompanied by a substantial fee increase.
- Submitted proposals to Government for changes to civil fees, including an increase in the basic rate and new provisions to make the fee structure more flexible.
- Began a pilot exercise to help solicitors identify inefficiencies in their own operation of the legal aid system with a view to helping them become more efficient and profitable.
- Commissioned research to inform our approach to ensuring a sufficient flow of new solicitors into legal aid work and worked with the Law Society to provide training for this group.

## **PROVIDING VALUE FOR MONEY**

Despite costing more in 2007-08 than in any previous year, the total cost of legal aid was less than it would have been if changes had not been made over recent years to make legal aid more efficient.

### **Efficient government**

- The Board has worked closely with the Scottish Government to achieve “efficient government” savings by changing what work is paid for under legal aid. This includes changes made as part of the civil advice and assistance reforms, High Court reforms, amendments to fixed payments for summary criminal cases and various changes to the Legal Aid (Scotland) Act 1986 and associated regulations.
- These measures, taken together, gave the Legal Aid Fund recurring savings of £5.7 million in 2005-06, growing to £12.2 million in 2007-08 and means taxpayers are getting better value for money.

### **Controlling the cost of legal aid**

- Without the work the Board does in assessing applications, scrutinising accounts and investigating fraud and abuse, the cost of legal aid to the taxpayer would have been very much higher than it was.
- We check rigorously that applicants for legal aid qualify financially, we only fund cases where it is reasonable and lawyers charge properly for the work they do and which falls within the regulations.
- Once legal aid is granted, the Board still has a role in controlling the running of cases to ensure that any costs are necessary and remain proportionate to the issue at stake. These and other controls result in significant savings to the taxpayer. For example, in 2007-08, we reduced by around £5 million the amount claimed by solicitors and advocates because we did not consider that it represented work that met our tests for public expenditure: that it had been carried out reasonably, necessarily and with due regard to economy.

### **Minimising fraud and abuse**

- Board investigations into fraud and abuse also pay for themselves many times over. In the last year, the Board acted against several solicitors for abuses ranging from exaggerated claims for travel or charging for work carried out by unqualified staff at solicitor rates, to false claims for attending court or tribunal hearings and fictitious meetings with clients. This action results in us recovering significant sums from such solicitors, as well as ending activity that would otherwise continue unchecked. In total, the value of money recovered and future losses prevented came to an estimated £2 million. This includes £812,000 recovered in the most serious fraud ever uncovered by the Board, in which a solicitor specialising in cases involving children defrauded the Legal Aid Fund over several years. The balance of £1 million was recovered by the Civil Recovery Unit of the Crown Office.
- As well as our routine assessment of applicants’ financial circumstances, we refused legal aid in 80 cases that involved a formal investigation of applicants’ resources.
- Where legal aid had already been granted, subsequent investigations in around 220 cases led to us withdrawing legal aid and recovering or preventing losses of almost £1 million.
- In 2007-08, we reported 44 individuals to the Procurator Fiscal. In cases that have concluded, convictions for fraud were obtained and fines imposed: in addition, the applicants have had to repay to the Board the cost of their legal aid.

## **BACKGROUND ON THE BOARD AND LEGAL AID**

### **ABOUT THE BOARD**

The Scottish Legal Aid Board was set up in 1987 to manage legal aid in Scotland. We are a non-departmental public body responsible to the Scottish Government. Our work is overseen by Board Members, who are appointed by Scottish Ministers.

Ministers in the Scottish Government decide legal aid policy. Ministers propose the legislation to set the rules for legal aid, and the fees to be paid to the legal profession. The Scottish Parliament makes and changes legislation – including the tests for granting legal assistance. These tests are then applied to every single case. In advice and assistance and some special urgency cases, solicitors apply the tests. For civil and criminal legal aid we apply the tests, except in some criminal and children's cases, where the courts decide.

The budget for legal aid is different from many other public services, it is not a set amount. The Scottish Government gives the Board the necessary funds to meet the cost of cases. This means we never have to refuse someone legal aid simply because there is no money left to pay for their case. A large part of our job is to decide who should get legal aid. If it is granted, legal aid is used to pay solicitors, counsel – advocates and solicitor advocates – and other costs of the case. The solicitor could be in private practice, employed by the Board or in a law centre.

Our work includes:

- advising Scottish Ministers on how legal aid is working, and ways to develop it
- managing the Legal Aid Fund and deciding whether to grant applications for legal aid
- deciding if people have to pay towards the cost of legal assistance, then collecting these amounts
- assessing solicitors' and advocates' accounts for legal aid work, and paying them for the work they have done
  - registering firms and solicitors who do legal assistance work and making sure these firms and solicitors maintain high standards, including funding civil quality assurance which is run by the Law Society of Scotland
- investigating and tackling fraud and abuse of legal aid
- developing a network of Board-employed solicitors who offer criminal legal advice and representation, and also, under Part V of our legislation, developing advice services on civil matters using Board employed solicitors
- exploring new ways of delivering legal aid services. If provisions in the Legal Profession and Legal Aid (Scotland) Act 2007 are commenced, and subject to decisions by Scottish Ministers, our work will include:
  - assessing applications for legal aid in serious criminal cases, a job currently done by the courts
  - registering agencies and their specialist advisers who are not lawyers to provide advice and assistance and making sure they meet standards set out in a Code of Practice
  - grant funding advice services.

### **ABOUT LEGAL AID**

Legal aid is help towards the costs of legal advice and representation, for those who qualify, paid for out of public funds. It is designed to help individuals on low and modest incomes gain access to the legal system.

There are two main types of legal assistance: advice and assistance and legal aid. Together these are called legal assistance.

Legal aid may be free, or someone may have to pay towards the cost of their case, for example through paying a contribution or from the money or property that they win or keep as a result of their legal action. Legal aid is accessed through a solicitor.

- Advice and assistance covers a wide range of matters, so long as they are matters of Scots law. It pays for advice from a solicitor but not usually representation. Representation can be provided in various specific types of case under assistance by way of representation (ABWOR).

• Legal aid provides funding for a solicitor to put the case in court and some tribunals. It covers the preparation work, as well as the hearing itself, and can provide funding for advocates, experts and other costs. (Cases often begin with advice and assistance, and legal aid may be the next step if necessary.) The main types of case that advice and assistance and legal aid can help with are:

- civil cases – such as divorce and other matters affecting family and children, or actions for compensation after an accident or medical negligence
- criminal cases – help, advice and representation for someone charged with a criminal offence or needing advice about a criminal matter
- children’s cases – under the Children (Scotland) Act 1995, which helps to make sure children are protected and supervised. Legal aid also funds appeals against decisions of children’s hearings.

Unlike most public expenditure, the legal aid fund is not cash limited. The Scottish Government will provide the Board with the funds required to meet the cost of cases which have been granted.

**ENDS**

**JOURNALISTS PLEASE CONTACT:** Mat Lopez tel. (direct) 0131 240 1887.

**NOTES FOR EDITORS:** The Board’s annual report and information on payments made to all firms of solicitors, advocates and solicitor advocates is available on the Board’s website, [www.slab.org.uk](http://www.slab.org.uk)